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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

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MAURICE MCKAY

05-CV-8936

Plaintiff,

- against -

**AMENDED
ANSWER**

TRIBOROUGH BRIDGE AND TUNNEL
AUTHORITY ("TBTA"), TBTA POLICE OFFICER
MICHAEL CHIAIA, Shield #2507, TBTA POLICE
OFFICER JOSE VASQUEZ, TBTA POLICE OFFICER
CLARENCE WHITAKER, Shield #422, TBTA
POLICE OFFICER MICHAEL ALBANO, TBTA
POLICE OFFICER MICHAEL ZINO,

Defendants.
-----X

C O U N S E L O R S :

Defendants, THE TRIBOROUGH BRIDGE AND TUNNEL AUTHORITY,
TBTA POLICE OFFICER MICHAEL CHIAIA, Shield #2507, TBTA POLICE
OFFICER JOSE VASQUEZ, TBTA POLICE OFFICER CLARENCE WHITAKER,
Shield #422, TBTA POLICE OFFICER MICHAEL ALBANO, and TBTA POLICE
OFFICER MICHAEL ZINO, through their attorneys BARRY, McTIERNAN &
MOORE, answering the First Amended Complaint of the plaintiff, states as follows:

I. PRELIMINARY STATEMENT

FIRST: Deny each and every allegation contained in paragraph
numbered "1" of the First Amended Complaint.

II. JURISDICTION

SECOND: Deny each and every allegation contained in paragraph numbered "2" of the First Amended Complaint except admits that plaintiff purports to bring this action, seek relief and invoke the jurisdiction of the Court.

III. PARTIES

THIRD: Deny any knowledge or information sufficient to form a belief as to the allegations contained in paragraphs numbered "3," "5" and "6" of the First Amended Complaint.

FOURTH: Deny each and every allegation contained in paragraph numbered "4" of the First Amended Complaint except admits that Defendant TBTA operates the TRIBOROUGH BRIDGE AND TUNNEL AUTHORITY.

FIFTH: Deny upon information and belief, each and every allegation contained in paragraph numbered "7" of the First Amended Complaint.

IV. FACTS

SIXTH: Deny each and every allegation contained in paragraphs numbered "9," "14," "16," "17" and "18" of the First Amended Complaint.

SEVENTH: Deny upon information and belief, each and every allegation contained in paragraphs numbered "10" and "15" of the First Amended Complaint.

EIGHTH: Deny each and every allegation contained in paragraph numbered "11" of the First Amended Complaint except admits that MCKAY was arraigned in Bronx County Supreme Court on April 24, 2005.

NINTH: Admit each and every allegation contained in paragraph numbered "12" of the First Amended Complaint.

TENTH: Deny any knowledge or information sufficient to form a belief as to the allegations contained in paragraph numbered "13" of the First Amended Complaint.

V. FIRST CAUSE OF ACTION
Pursuant to Section 1983 (False Arrest)

ELEVENTH: Answering paragraph numbered "19" of the First Amended Complaint, defendants, THE TRIBOROUGH BRIDGE AND TUNNEL AUTHORITY, TBTA POLICE OFFICER MICHAEL CHIAIA, Shield #2507, TBTA POLICE OFFICER JOSE VASQUEZ, TBTA POLICE OFFICER CLARENCE WHITAKER, Shield #422, TBTA POLICE OFFICER MICHAEL ALBANO, and TBTA POLICE OFFICER MICHAEL ZINO, repeat, reiterate and reallege each and every response contained in paragraphs numbered "FIRST" through "TENTH" of this Answer.

TWELFTH: Deny each and every allegation contained in paragraphs numbered "20," "21," "22," "23," "24," "25" and "26" of the First Amended Complaint.

VI. SECOND CAUSE OF ACTION
Pursuant to Section 1983 (Excessive Force)

THIRTEENTH: Answering paragraph numbered "27" of the First Amended Complaint, defendants, THE TRIBOROUGH BRIDGE AND TUNNEL AUTHORITY, TBTA POLICE OFFICER MICHAEL CHIAIA, Shield #2507, TBTA POLICE OFFICER JOSE VASQUEZ, TBTA POLICE OFFICER CLARENCE WHITAKER, Shield #422, TBTA POLICE OFFICER MICHAEL ALBANO, and TBTA POLICE OFFICER MICHAEL ZINO, repeat, reiterate and reallege each and every response contained in paragraphs numbered "FIRST" through "TWELFTH" of this Answer.

FOURTEENTH: Deny each and every allegation contained in paragraphs numbered "28," "29," "30," "31," "32," "33," "34," "35," "36," "37," "38," "39," "40" and "41" of the First Amended Complaint.

VII. THIRD CAUSE OF ACTION
Pursuant to Section 1983 (Malicious Prosecution)

FIFTEENTH: Answering paragraph numbered "42" of the First Amended Complaint, defendants, THE TRIBOROUGH BRIDGE AND TUNNEL AUTHORITY, TBTA POLICE OFFICER MICHAEL CHIAIA, Shield #2507, TBTA POLICE OFFICER JOSE VASQUEZ, TBTA POLICE OFFICER CLARENCE WHITAKER, Shield #422, TBTA POLICE OFFICER MICHAEL ALBANO, and TBTA POLICE OFFICER MICHAEL ZINO, repeat, reiterate and reallege each and every response contained in paragraphs numbered "FIRST" through "FOURTEENTH" of this Answer.

SIXTEENTH: Deny each and every allegation contained in paragraphs numbered "43," "44," "45," "46," "47," "48," "49," "50" and "51" of the First Amended Complaint.

VIII. FOURTH CAUSE OF ACTION

Pursuant to U.S. Const., Amend. 1; N.Y. State Const. Art. 1, Section 12

SEVENTEENTH: Answering paragraph numbered "52" of the First Amended Complaint, defendants, THE TRIBOROUGH BRIDGE AND TUNNEL AUTHORITY, TBTA POLICE OFFICER MICHAEL CHIAIA, Shield #2507, TBTA POLICE OFFICER JOSE VASQUEZ, TBTA POLICE OFFICER CLARENCE WHITAKER, Shield #422, TBTA POLICE OFFICER MICHAEL ALBANO, and TBTA POLICE OFFICER MICHAEL ZINO, repeat, reiterate and reallege each and every response contained in paragraphs numbered "FIRST" through "SIXTEENTH" of this Answer.

EIGHTEENTH: Deny each and every allegation contained in paragraphs numbered "53," "54," "55" and "56" of the First Amended Complaint.

**FOR A FIRST SEPARATE AND DISTINCT
AFFIRMATIVE DEFENSE TO THE ALLEGED CAUSE(S) OF
ACTION OF THE PLAINTIFF, DEFENDANTS TRIBOROUGH
BRIDGE AND TUNNEL AUTHORITY, TBTA POLICE
OFFICER MICHAEL CHIAIA, Shield #2507, TBTA POLICE
OFFICER JOSE VASQUEZ, TBTA POLICE OFFICER
CLARENCE WHITAKER, Shield #422, TBTA POLICE OFFICER
MICHAEL ALBANO and TBTA POLICE OFFICER MICHAEL
ZINO, ALLEGE, UPON INFORMATION AND BELIEF:**

NINETEENTH: That whatever injuries the plaintiff alleges to have sustained at the time and place of the occurrence mentioned in the complaint, were

caused, in whole or part, by the culpable conduct including, but not limited to, assumption of risk, if applicable, of the said plaintiff. Said conduct having contributed thereto of the said plaintiff, said culpable conduct having contributed thereto.

TWENTIETH: The amount of damages recovered if any, should therefore be diminished in the proportion which the said culpable conduct including, but not limited to assumption of risk, if applicable is attributable to the plaintiff whom bears to the culpable conduct that caused the said damages.

**FOR A SECOND SEPARATE AND DISTINCT
AFFIRMATIVE DEFENSE TO THE ALLEGED CAUSE(S) OF
ACTION OF THE PLAINTIFF, DEFENDANTS TRIBOROUGH
BRIDGE AND TUNNEL AUTHORITY, TBTA POLICE
OFFICER MICHAEL CHIAIA, Shield #2507, TBTA POLICE
OFFICER JOSE VASQUEZ, TBTA POLICE OFFICER
CLARENCE WHITAKER, Shield #422, TBTA POLICE OFFICER
MICHAEL ALBANO and TBTA POLICE OFFICER MICHAEL
ZINO, ALLEGE, UPON INFORMATION AND BELIEF:**

TWENTY-FIRST: Plaintiff's claim for punitive damages against defendant TBTA and must be dismissed as said defendant TBTA is a governmental entity and, as such is not liable for punitive damages.

**FOR A THIRD SEPARATE AND DISTINCT
AFFIRMATIVE DEFENSE TO THE ALLEGED CAUSE(S) OF
ACTION OF THE PLAINTIFF, DEFENDANTS TRIBOROUGH
BRIDGE AND TUNNEL AUTHORITY, TBTA POLICE
OFFICER MICHAEL CHIAIA, Shield #2507, TBTA POLICE
OFFICER JOSE VASQUEZ, TBTA POLICE OFFICER
CLARENCE WHITAKER, Shield #422, TBTA POLICE OFFICER
MICHAEL ALBANO and TBTA POLICE OFFICER MICHAEL
ZINO, ALLEGE, UPON INFORMATION AND BELIEF:**

TWENTY-SECOND: Plaintiff's complaint fails in whole or in part to state
a claim upon which relief may be granted.

**FOR A FOURTH SEPARATE AND DISTINCT
AFFIRMATIVE DEFENSE TO THE ALLEGED CAUSE(S) OF
ACTION OF THE PLAINTIFF, DEFENDANTS TRIBOROUGH
BRIDGE AND TUNNEL AUTHORITY, TBTA POLICE
OFFICER MICHAEL CHIAIA, Shield #2507, TBTA POLICE
OFFICER JOSE VASQUEZ, TBTA POLICE OFFICER
CLARENCE WHITAKER, Shield #422, TBTA POLICE OFFICER
MICHAEL ALBANO and TBTA POLICE OFFICER MICHAEL
ZINO, ALLEGE, UPON INFORMATION AND BELIEF:**

TWENTY-THIRD: This Court lacks jurisdiction of Plaintiff's pendent state
claims.

**FOR A FIFTH SEPARATE AND DISTINCT
AFFIRMATIVE DEFENSE TO THE ALLEGED CAUSE(S) OF
ACTION OF THE PLAINTIFF, DEFENDANTS TRIBOROUGH
BRIDGE AND TUNNEL AUTHORITY, TBTA POLICE
OFFICER MICHAEL CHIAIA, Shield #2507, TBTA POLICE
OFFICER JOSE VASQUEZ, TBTA POLICE OFFICER
CLARENCE WHITAKER, Shield #422, TBTA POLICE OFFICER
MICHAEL ALBANO and TBTA POLICE OFFICER MICHAEL
ZINO, ALLEGE, UPON INFORMATION AND BELIEF:**

TWENTY-FOURTH: At all times relevant to the acts alleged in the complaint, the duties and functions of defendant TBTA employees, including MICHAEL CHIAIA, entailed the reasonable exercise of proper and lawful discretion. Therefore, defendant TBTA and MICHAEL CHIAIA are entitled to governmental, federal, common law and/or statutory immunity from liability.

**FOR A SIXTH SEPARATE AND DISTINCT
AFFIRMATIVE DEFENSE TO THE ALLEGED CAUSE(S) OF
ACTION OF THE PLAINTIFF, DEFENDANTS TRIBOROUGH
BRIDGE AND TUNNEL AUTHORITY, TBTA POLICE
OFFICER MICHAEL CHIAIA, Shield #2507, TBTA POLICE
OFFICER JOSE VASQUEZ, TBTA POLICE OFFICER
CLARENCE WHITAKER, Shield #422, TBTA POLICE OFFICER
MICHAEL ALBANO and TBTA POLICE OFFICER MICHAEL
ZINO, ALLEGE, UPON INFORMATION AND BELIEF:**

TWENTY-FIFTH: TBTA and its employees have not violated any rights, privileges, or immunities secured by plaintiff under the Constitution or laws of the United States or the state of New York, or any political subdivision thereof, not has any defendant violated any act of Congress providing for the protection of civil rights.

**FOR A SEVENTH SEPARATE AND DISTINCT
AFFIRMATIVE DEFENSE TO THE ALLEGED CAUSE(S) OF
ACTION OF THE PLAINTIFF, DEFENDANTS TRIBOROUGH
BRIDGE AND TUNNEL AUTHORITY, TBTA POLICE
OFFICER MICHAEL CHIAIA, Shield #2507, TBTA POLICE
OFFICER JOSE VASQUEZ, TBTA POLICE OFFICER
CLARENCE WHITAKER, Shield #422, TBTA POLICE OFFICER
MICHAEL ALBANO and TBTA POLICE OFFICER MICHAEL
ZINO, ALLEGE, UPON INFORMATION AND BELIEF:**

TWENTY-SIXTH: There was probable cause for plaintiff's arrest.

**FOR A EIGHTH SEPARATE AND DISTINCT
AFFIRMATIVE DEFENSE TO THE ALLEGED CAUSE(S) OF
ACTION OF THE PLAINTIFF, DEFENDANTS TRIBOROUGH
BRIDGE AND TUNNEL AUTHORITY, TBTA POLICE
OFFICER MICHAEL CHIAIA, Shield #2507, TBTA POLICE
OFFICER JOSE VASQUEZ, TBTA POLICE OFFICER
CLARENCE WHITAKER, Shield #422, TBTA POLICE OFFICER
MICHAEL ALBANO and TBTA POLICE OFFICER MICHAEL
ZINO, ALLEGE, UPON INFORMATION AND BELIEF:**

TWENTY-SEVENTH: At all times relevant to the acts alleged in the
complaint, the conduct of the defendants was reasonable, proper lawful constitutional in
good faith and without malice.

**FOR A NINTH SEPARATE AND DISTINCT
AFFIRMATIVE DEFENSE TO THE ALLEGED CAUSE(S) OF
ACTION OF THE PLAINTIFF, DEFENDANTS TRIBOROUGH
BRIDGE AND TUNNEL AUTHORITY, TBTA POLICE
OFFICER MICHAEL CHIAIA, Shield #2507, TBTA POLICE
OFFICER JOSE VASQUEZ, TBTA POLICE OFFICER
CLARENCE WHITAKER, Shield #422, TBTA POLICE OFFICER
MICHAEL ALBANO and TBTA POLICE OFFICER MICHAEL
ZINO, ALLEGE, UPON INFORMATION AND BELIEF:**

TWENTY-EIGHTH: Defendants assert the limitations of Article 16 of the CPLR as to all claims asserted in this supplemental complaint which are determined by this Court to be subject to the limitations of said statute.

**FOR A TENTH SEPARATE AND DISTINCT
AFFIRMATIVE DEFENSE TO THE ALLEGED CAUSE(S) OF
ACTION OF THE PLAINTIFF, DEFENDANTS TRIBOROUGH
BRIDGE AND TUNNEL AUTHORITY, TBTA POLICE
OFFICER MICHAEL CHIAIA, Shield #2507, TBTA POLICE
OFFICER JOSE VASQUEZ, TBTA POLICE OFFICER
CLARENCE WHITAKER, Shield #422, TBTA POLICE OFFICER
MICHAEL ALBANO and TBTA POLICE OFFICER MICHAEL
ZINO, ALLEGE, UPON INFORMATION AND BELIEF:**

TWENTY-NINTH: Some or all of plaintiff's claims are barred by the doctrines of res judicata and/or collateral estoppel.

WHEREFORE, defendants TBTA and MICHAEL CHIAIA, demand judgment dismissing the Complaint of the plaintiff with costs.

Dated: New York, New York
May 2, 2007



JOHN V. WYNNE (JVW3072)
BARRY, McTIERNAN & MOORE

Attorneys for Defendants
2 Rector Street - 14th Floor
New York, New York 10006
(212) 313-3600
File No.: TB 50514

TO:
DAVID A. ZELMAN, ESQ. (DZ 8578)
Attorneys for Plaintiff
612 Eastern Parkway
Brooklyn, NY 11225
(718) 604-3072